

STATE OF MICHIGAN
COURT OF APPEALS

ALAN PAUL,

Plaintiff-Appellant,

v

CRAIG PAUL, CHRISTINE PAUL, and JP
MORGAN CHASE & CO. d/b/a CHASE,

Defendants-Appellees.

UNPUBLISHED

December 17, 2013

No. 311609

Oakland Circuit Court

LC No. 2012-125803-CZ

Before: METER, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendants Christine Paul and JP Morgan Chase & Co. (Chase) pursuant to MCR 2.116(C)(8), and defendant Craig Paul pursuant to MCR 2.116(I)(1). We affirm.

Plaintiff and defendant Craig are brothers and Eleanor was their mother. Eleanor had a trust which provided in pertinent part that, upon her death, plaintiff and Craig would receive the trust assets in equal shares. Eleanor also had a brokerage account through Chase, which at one time was an asset of the trust. However, during her lifetime, Eleanor removed the brokerage account from the trust, designating it as a transfer-on-death brokerage account of which she was the sole owner. Defendant Craig was the named beneficiary of the brokerage account. Defendant Christine, an employee of Chase and Craig's wife, assisted plaintiff's mother in making that change. When Eleanor died, Chase distributed the proceeds of the brokerage account to defendant Craig.

Plaintiff then filed his two-count conversion complaint against defendants Craig, Christine, and Chase, alleging common-law and statutory conversion claims. Plaintiff averred that he was entitled to half of the proceeds of a brokerage account pursuant to the terms of his mother Eleanor's trust and that defendants converted the funds rightfully owned by plaintiff to their own use. In response to plaintiff's complaint, Chase and Christine moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that the brokerage account at issue was a transfer-on-death account and MCL 700.6101 *et seq.* provides that such accounts are nontestamentary. Because defendant Craig was the designated beneficiary of the brokerage account, which was not part of Eleanor's trust or estate, Chase properly distributed the proceeds of the account to Craig. Accordingly, plaintiff could not establish any claim of interest in the

brokerage account and his conversion claims must fail as a matter of law, entitling defendants to summary disposition.

Plaintiff responded to the motion for summary disposition, arguing that Christine was an employee of Chase and may have used her position to unduly influence Eleanor's decision to remove the brokerage account from the trust and designate Craig as the beneficiary. Plaintiff argued that there was an issue of fact in this regard because Eleanor made the change to the brokerage account around the time she underwent a surgical procedure. In response to plaintiff's argument, Craig filed a reply arguing that Eleanor underwent the surgical procedure about seventeen months before she died and was healthy thereafter; thus, she had sufficient time to reconsider her decision regarding the brokerage account if that was her desire. Craig also argued that the title of the brokerage account clearly indicated that it was a transfer-on-death account, and there was sufficient signed documentation evidencing Eleanor's intentions with regard to this brokerage account, including that her signature was on the Transfer-on-Death Agreement and she also signed a letter in that regard.

Following oral arguments, the trial court rendered its opinion and order granting the motion for summary disposition in favor of Chase and Christine pursuant to MCR 2.116(C)(8). The trial court held that: (1) plaintiff had a right to half of the trust assets upon Eleanor's death, (2) the brokerage account was not a trust asset, (3) the brokerage account was a transfer-on-death account, and (4) Chase properly transferred the proceeds of the brokerage account to the designated beneficiary, Craig. The trial court considered and rejected plaintiff's claim that Christine, an employee of Chase, may have unduly influenced Eleanor's decision and thereby converted the proceeds of the account. Accordingly, plaintiff's common-law and statutory conversion claims failed to state a claim as a matter of law; thus, Chase and Christine were entitled to summary dismissal of plaintiff's claims. Further, the trial court held, Craig was entitled to summary disposition pursuant to MCR 2.116(I)(1) for the same reasons. This appeal followed.

Plaintiff first argues that the trial court erred in granting Christine and Chase summary disposition under MCR 2.116(C)(8). We disagree.

We review de novo a trial court's decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the complaint and allows consideration of only the pleadings." *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). "All well-pleaded factual allegations are accepted as true and are construed in a light most favorable to the nonmovant." *Maiden*, 461 Mich at 119. Summary disposition is proper under MCR 2.116(C)(8) "only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *MacDonald*, 464 Mich at 332.

Plaintiff's complaint alleged common-law conversion and statutory conversion, MCL 600.2919a. Common-law conversion is defined as "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111; 593 NW2d 595 (1999), quoting *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). The act of dominion is wrongful when it is inconsistent with the ownership rights of another. *Check*

Reporting Servs, Inc v Mich Nat'l Bank-Lansing, 191 Mich App 614, 626; 478 NW2d 893 (1991). Statutory conversion is set forth at MCL 600.2919a and prohibits stealing, embezzling, or converting another person's property to the other person's own use. MCL 600.2919a(1)(a). Because the term "conversion" is not defined in the statute and this word has acquired a peculiar meaning in the law, the common-law defines the term for both common-law and statutory conversion. See *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 223; 779 NW2d 304 (2009). Accordingly, plaintiff was required to show that defendants wrongfully exerted domain over his personal property in denial of his rights to sustain both his common-law and statutory conversion claims. See *Head*, 234 Mich App at 111.

The "personal property" at issue in this case was a brokerage account owned by Eleanor. Plaintiff's complaint alleged that a brokerage account managed by Chase was part of Eleanor's trust and he was entitled to half of the brokerage account's proceeds. However, the brokerage account was a transfer-on-death account and Craig was the beneficiary. Pursuant to MCL 700.6101(1)(a), a nonprobate transfer-on-death account is nontestamentary where the written instrument is intended to pay money owned by a decedent before death to another person after the decedent's death. Thus, plaintiff's claim that he was entitled to half of the brokerage account proceeds is meritless under MCL 700.6101(1)(a). Because plaintiff did not have an enforceable interest in the brokerage account proceeds, his complaint failed to set forth legally sufficient common-law or statutory conversion claims. See *Head*, 234 Mich App at 111. Accordingly, the trial court properly granted summary disposition in favor of Christine and Chase pursuant to MCR 2.116(C)(8). See *MacDonald*, 464 Mich at 332.

Next, plaintiff argues that the trial court abused its discretion in denying his request to amend his complaint to clarify his allegation that Christine, as a Chase employee, "made the conversion of the money (brokerage account) from a trust asset to a personal asset." We disagree.

We review for an abuse of discretion the trial court's decision to deny leave to amend a pleading. *Boylan v Fifty Eight LLC*, 289 Mich App 709, 727; 808 NW2d 277 (2010). MCR 2.116(I)(5) provides that "[i]f the grounds asserted [for summary disposition] are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified."

During oral argument on the motion for summary dismissal, plaintiff requested leave to amend his complaint "now that we have proof positive that it was the wife of the defendant who was an employee of the bank who made the conversion of the money from a trust asset to a personal asset." Defense counsel opposed the request, arguing that Eleanor herself made the change to the brokerage account in October 2009 and she died in March 2011, about seventeen months later. During that seventeen month period of time, Eleanor was healthy and had no mental problems. The trial court rejected plaintiff's claim, apparently concluding that such amendment to plaintiff's complaint would be futile. See MCR 2.118(A)(2); *PT Today, Inc v Comm'r of Office of Fin & Ins Servs*, 270 Mich App 110, 143; 715 NW2d 398 (2006). Eleanor herself removed her brokerage account from the trust seventeen months before her death and the brokerage account was Eleanor's personal property at the time that it was changed to a transfer-on-death account. Therefore, the proposed amendment to plaintiff's complaint would be legally

insufficient on its face because none of the defendants, including Christine, wrongfully exerted domain over plaintiff's *personal property* in denial of his rights. See *Head*, 234 Mich App at 111. Thus, the trial court did not abuse its discretion when it denied plaintiff's request to amend his complaint. See *Boylan*, 289 Mich App at 727.

Finally, plaintiff argues that the trial court erred in granting summary disposition in favor of Craig under MCR 2.116(I)(1). A trial court's grant of summary disposition under MCR 2.116(I)(1) is reviewed de novo. *Kenefick v Battle Creek*, 284 Mich App 653, 654; 774 NW2d 925 (2009). MCR 2.116(I)(1) provides that "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay."

Here, as discussed above, plaintiff's common-law and statutory conversion claims set forth in his complaint were legally insufficient. Thus, Craig was entitled to judgment as a matter of law, and the trial court properly granted summary disposition in favor of Craig under MCR 2.116(I)(1). See *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009).

Affirmed.

/s/ Patrick M. Meter
/s/ Mark J. Cavanagh
/s/ Henry William Saad